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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY
SHAREHOLDER DERIVATIVE LITIGATION,

This Document Relates to:
ALL ACTIONS

Case No. 4:16-cv-05541-JST

**John Cashman's Response to Plaintiffs' Motion
for Sanctions Against Kevin Fisher and His
Counsel**

Judge: Hon. Jon S. Tigar
Courtroom: 6, 2nd Floor (Oakland)
Date: Filed without hearing date
per shelter-in-place order

1 Cashman briefly responds to plaintiffs’ motion for sanctions against Fisher and his counsel (Dkt. 329)
2 to make two points.

3 *First*, discovery is not necessary to determine whether there is objector blackmail. The only discovery
4 conducted in *Pearson v. Target*, 2019 WL 4597367 (N.D. Ill.), the only case plaintiffs cite for the need for
5 discovery, was for the secret agreements between the objectors and the settling parties—and that information
6 is already in the record here. Dkt. 327-7.

7 The question of objector blackmail is an objective legal question: did the agreement meet the standards
8 for court approval under Fed. R. Civ. Proc. 23(e)(5)(B), or did it not? (Not once do plaintiffs mention
9 Rule 23(e)(5)(B) or the Advisory Committee Notes associated with it—even though class counsel’s name
10 partner has co-written an article about the subject. Elizabeth J. Cabraser & Adam N. Steinman, *What Is a Fair*
11 *Price for Objector Blackmail? Class Action Objectors and the 2018 Amendments to Rule 23*, 24 Lewis & Clark L. Rev. 549
12 (2020).) The agreement between Wells Fargo and Fisher speaks for itself, the subjective characterizations of
13 the negotiations are irrelevant, and the Court can determine on the papers whether the agreement was for the
14 benefit of shareholders or for the benefit of Fisher at the expense of shareholders. Discovery adds nothing to
15 this inquiry, other than permitting plaintiffs to vindictively harass the objectors and multiply and delay
16 proceedings.

17 *Second*, though the motion and order seek sanctions against Fisher, it makes unfounded and baseless
18 insinuations against Cashman, asking for a fishing expedition to determine whether “Cashman and Frank
19 knowingly benefited from the ‘objector blackmail’ Frank claims to abhor.” But Cashman and Frank received
20 no benefit from the agreement. Under the local rules, Wells Fargo’s response to Cashman’s May 4 motion for
21 attorneys’ fees was due on May 18. Wells Fargo filed no response on May 18, and forfeited any opposition.
22 The Fisher-Wells Fargo agreement was not executed until May 29. Dkt. 327-7. Any provision in that agreement
23 purporting to bind Wells Fargo with respect to Cashman’s request for fees—which Cashman had no part in
24 negotiating—was excess verbiage, because Wells Fargo had already forfeited the right to oppose the fee
25 request.

26 Nevertheless, in an excess abundance of caution, counsel for Cashman approached counsel for Wells
27 Fargo, expressly disclaimed any benefit from the Fisher-Wells Fargo agreement, and further repeatedly offered
28 to Wells Fargo to stipulate to Wells Fargo being allowed to file a late opposition to Cashman’s fee request.

Wells Fargo declined, because it does not oppose Cashman's fee request or wish to file a response. *See* Exhibit 1, June 22 email chain from Theodore H. Frank to Christopher Vapiano; Exhibit 2, June 22 email chain from Christopher Vapiano to Theodore H. Frank. Cashman's right to attorneys' fees in this case is unambiguous, and Wells Fargo is rationally choosing not to spend attorney resources opposing a reasonable, and small, fee request of \$250,000.

Cashman's counsel's record opposing objector blackmail is beyond dispute, and class counsel's baseless insinuations demonstrate that their request for discovery is not in good faith. Cashman's fee request is orthogonal to any dispute between class counsel and Fisher, and has nothing to do with the Wells Fargo-Fisher agreement from which Cashman received no benefit—especially when he also disclaimed any hint of a benefit. The Court can rule on the pending motion for Cashman's fees without regard to the dispute over the merits of the Wells Fargo-Fisher agreement.

CONCLUSION

The Court can determine the propriety of the Fisher-Wells Fargo agreement without additional discovery. Cashman received no benefit from the Fisher-Wells Fargo agreement, and there is no reason to delay any ruling on his fee request.

Dated: June 26, 2020

Respectfully submitted,

/s/ Theodore H. Frank

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PROOF OF SERVICE

I hereby certify that on this day I electronically filed the foregoing Objector Cashman's Reply in Support of Objectors' Motion for Attorneys' Fees using the CM/ECF filing system thus effectuating service of such filing on all ECF registered attorneys in this case.

DATED this 26th day of June, 2020.

/s/ Theodore H. Frank

Theodore H. Frank